Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1979

NO. 79-1205

In The Matter of LEWIS T. WIREMAN

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

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NO.

In The Matter of LEWIS T. WIREMAN

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

TO THE HONORABLE, THE CHIEF JUSTICE and ASSOCIATE JUSTICES of the SUPREME COURT OF THE UNITED STATES:

Lewis T. Wireman, the petitioner herein, prays that a writ of certiorari issue to review the orders of the Supreme Court of Indiana entered in the above-entitled case on August 28, 1979, and November 8, 1979.

OPINION BELOW

No opinion has been filed or reported with respect to the orders described above. The Order Denying Motion For Relief From Judgment entered on August 28, 1979 is printed as Appendix A(1) below at page A-1. The Order Denying Motion For Reconsideration Of Ruling On Respondent's Motion For Relief From Judgment entered on November 8, 1979, is printed as Appendix A(2) below at page A-2.

JURISDICTION

The original judgment of the Supreme Court of Indiana, entered on October 14, 1977, is not the subject of the present petition. Within one year from the date of entry of the said Judgment, on October 13, 1978, the petitioner filed with the Supreme Court of Indiana his Motion For Relief From Judgment. This Motion was denied by the Order entered August 28, 1979, whereupon the petitioner filed his Motion For Reconsideration, which motion was denied on November 8, 1979.

Jurisdiction of this Court is invoked pursuant to 28 *U.S.C.* § 1257(3).

QUESTIONS PRESENTED

The petitioner respectfully submits for consideration the following questions which address deprivation of rights and privileges secured to him by the United States Constitution:

I. BY DENYING THE PETITIONER'S MOTION FOR RELIEF FROM JUDGMENT UPON ORDERS ENTERED WITHOUT THE HEARING PRESCRIBED BY STATE COURT RULE, DID THE INDIANA SUPREME COURT DENY THE PETITIONER DUE PROCESS OF LAW?

II. IN FAILING TO ASSURE THE PETITIONER AN ALTERNATIVE, DISINTERESTED FORUM BEFORE WHICH HE MIGHT PRESENT AND ARGUE EVIDENCE THAT THE DISCIPLINARY JUDGMENT WAS PROCURED BY FRAUD AND PREJUDICE PRACTICED AGAINST HIM, DID THE INDIANA SUPREME COURT DEPRIVE THE PETITIONER OF DUE PROCESS OF LAW?

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES OF COURT INVOLVED

United States Constitution:

Fourteenth Amendment: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Federal Statutes:

28 *U.S.C.* § 1257(3): Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

. . . By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the grounds of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

28 *U.S.C.* § 2106: The Supreme Court, or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

State Court Rules:

Indiana Admission and Discipline Rule 23, Section 1:

Each person granted the privilege to practice law in this state has the obligation to conduct himself at all times in a manner consistent with the trust and confidence reposed in him by this court and in a manner consistent with his duties and responsibilities as an offer or judge of the courts of this state. This court has exclusive jurisdiction of all cases in which an attorney who is admitted to the bar of this court or who practices law in this state [hereinafter referred to as "attorney"] is charged with misconduct. The procedures hereinafter set forth shall be employed and construed to protect the public, the court and the members of the bar of this state from misconduct on the part of attorneys and to protect attorneys from unwarranted claims of misconduct.

Indiana Trial Rule 60(B)(1), (2), (3):

On motion and upon such terms as are just the court may relieve a party or his legal representative from a final judgment, order, default or proceeding for the following reasons:

(1) mistake, surprise, or excusable neglect;
(2) any ground for a motion to correct error, including without limitation newly discovered evidence, which by due diligence could not have been discovered in time to move for a motion to correct errors under Rule 59;

(3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.

Indiana Trial Rule 60(D):

In passing upon a motion allowed by subdivision (B) of this rule the court shall hear any pertinent evidence, allow

new parties to be served with summons, allow discovery, grant relief as provided under Rule 59 or otherwise as permitted by subdivision (B) of this rule.

STATEMENT

On October 14, 1977, after reviewing proceedings conducted before a hearing officer pursuant to Indiana Admission and Discipline Rule 23, the Indiana Supreme Court entered its opinion and order barring the petitioner Lewis T. Wireman from the further practice of law before the state courts of Indiana.

Within one year of the entry of the said order of disbarment, the petitioner Wireman filed with the Indiana Supreme Court his Motion For Relief From Judgment. The motion was made pursuant to Indiana Rules of Procedure Trial Rule 60(B), made applicable to disciplinary proceedings wherein the supreme court sits as the trial court. By his motion, supported by a detailed and verified affidavit, the petitioner put before the supreme court evidence that the judgment against him had been fraudulently procured, together with other evidence tending both to exonerate him and to impeach the credibility of the evidence adduced against him in the proceedings before the hearing officer.

No hearing was held on the petitioner's motion, which was denied by an order dated August 28, 1979. (Appendix A). The petitioner sought rehearing of the order of August 28, 1979, raising, *inter alia,* the point that he had been denied a hearing on his Motion For Relief From Judgment. His Motion For Reconsideration (Appendix B) ws denied without hearing or opinion on November 8, 1979.

The petition is now submitted within ninety days of the entry of that order.

REASONS FOR GRANTING THE WRIT

This case has been previously submitted to this Court on a Petition For Writ of Certiorari. The petition was denied. 436 U.S. 904 (1978). Now, after further proceedings before the Indiana Supreme Court, the matter is brought here anew. These issues are now presented for consideration:

First, the constitutional significance of clear procedural error committed by the Indiana Supreme Court in denying, without the hearing prescribed by its own rules, the petitioner's Motion For Relief From Judgment; and,

Second, the constitutional infirmity of the rule of necessity tacitly applied by the Indiana Supreme Court in administering and reviewing disciplinary investigations and in entering orders of discipline.

The petitioner respectfully requests that this Court accept this case and these issues for further argument and review. Alternatively, the petitioner prays that this Court grant certiorari, vacate the orders of August 28, 1979, and November 8, 1979, on the basis of plain error, and remand the matter to the Indiana Supreme Court for further consideration. *Cf. Proctor v. Warden,* 435 U.S. 559, 560 (1978). Error is predicated on the failure of the court below to permit the petitioner to be heard respecting fraud and newly-discovered evidence, a right to be heard expressly afforded moving parties by Trial Rule 60(D) and required by the due process clause of the Fourteenth Amendment.

Lower courts have emphasized that an attorney seeking to raise Fourteenth Amendment challenges to state court disbarment proceedings must look to this Court for relief, whether upon a petition for writ of certiorari, *Ginger v.*

Circuit Court For County of Wayne, 372 F.2d 621, 625 (6th Cir. 1967), or by an appeal. *Mildner v. Gulotta,* 405 F. Supp. 182, 197 (E.D. N.Y. 1975), *aff'd* 425 U.S. 901 ( ). Review is warranted here because the questions presented bear heavily upon the duty of a state judicial or administrative body, when exercising disciplinary powers, to abide by its own clearly-defined procedures and to maintain strict impartiality, both in substance and appearance. These obligations are at the core of due process.

I. THE ORDERS OF THE INDIANA SUPREME COURT ENTERED AUGUST 28, 1979, AND NOVEMBER 8, 1979, DENYING PETITIONER'S MOTION FOR RELIEF FROM JUDGMENT WITHOUT THE RULE-MANDATED HEARING, DEPRIVED THE PETITIONER OF DUE PROCESS OF LAW AND CANNOT BE SUPPORTED BY ADEQUATE STATE GROUNDS.

Denial of the petitioner's motions made pursuant to Trial Rule 60(B) without a hearing was in plain derogation of Trial Rule 60(D). The language of that provision is mandatory: ". . . [T]he court *shall hear* any pertinent evidence." (emphasis supplied). The Indiana appellate courts have so construed this provision. Thus, "if a motion under Rule TR. 60(B) is made by a party; notice to the opposing party and a hearing thereon is required before an order may be issued." *State ex rel. Aafco Heating & Air Conditioning Co., Inc. v. Lake Superior Court,* 263 Ind. 23, 328 N.E.2d 733, 734 (1975). "The language of Rule TR. 60(D) is mandatory." *Public Service Comm. v. Schaller,* 157 Ind. App. 125, 299 N.E.2d 625, 628 (1973). While the "mandatory" provision of 60(D) as to a hearing, however, is restricted to 'pertinent evidence,' *Id.* at 299 N.E.2d 630, the petitioner's supporting affidavit contained some forty-four sworn allegations, bearing principally upon new evi-

dence not previously discovered despite the diligence of the petitioner. (Appendix B(1) at A-14). The Indiana Supreme Court set no hearing on the motion, but merely ruled in a conclusory fashion that the petitioner had "failed to show any valid ground for the relief sought." The petitioner was thus summarily denied the very right to be heard in support of his motion which has been repeatedly affirmed by the Indiana appellate courts. *Compare School City of Gary v. Continental Electric Co., Inc.,* 158 Ind. App. 132, 301 N.E.2d 803, 809 (1973), where the court stressed "the mandatory provisions of TR 60(D)" in directing that Indiana trial courts should "hear any pertinent evidence" in contested matters. That a hearing is essential here is undeniable, given that the motion which the petitioner would vigorously advance would be opposed with equal vigor by the Grievance Commission. Omission of the hearing by the supreme court thus deprived the petitioner of a rule-mandated right to be heard, which, in turn, deprived him of constitutional due process.

The refusal of the court to grant to the petitioner his Trial Rule 60(D) hearing was timely raised in his motion for reconsideration, at paragraph 1. (Appendix B(2) at A-50). It is axiomatic that "[t]he requirements of fairness are not exhausted in the taking or consideration of evidence but extend to the concluding parts of the procedure as well." *Willner v. Committee on Character,* 373 U.S. 96, 105 (1963) (bar admissions case). Thus, a Fourteenth Amendment claim was held properly raised for the first time on an assignment of errors presented to the highest state court, where the aggrieved party was under no duty to anticipate that the state court would rule against him without affording him the opportunity to be heard on evidence which he was entitled to place on the record. *Saunders*

v. Shaw, 244 U.S. 317, 320 (1917). In moving for relief from judgment here, the petitioner anticipated that he would be heard pursuant to Trial Rule 60(D). The failure of the Indiana Supreme Court to hold the mandatory hearing on the petitioner's pertinent evidence was error properly challenged on the motion for reconsideration.

Where a state court has failed to follow its own rules in declining to entertain a post-conviction bill of exceptions, the constitutional claim raised by the excepting party will be heard by the Court over and against the contention of the state that the decision below rests on adequate state grounds. The constitutional issue will be disregarded by this Court only where "the judgment of the state court is based upon a non-federal ground adequate to sustain it." *Patterson v. Alabama,* 294 U.S. 600, 602 (1935). This Court there considered whether the Alabama Supreme Court had erred in deeming "the failure to file a bill of exceptions in time [*i.e.*, within ninety days from entry of judgment] sufficient in itself to deprive the state appellate court of decision." 294 U.S. at 605. The Alabama court had no power, of its own motion, to strike the bill of exceptions. The pertinent rule required that a motion to strike must be made be a party of record. No such motion having been made, refusal to entertain the bill could not be sustained on state grounds, and this Court thus undertook to review the state judgment with respect to constitutional issues presented.

Concededly, the manner in which a state court interprets and applies a state statute or court rule ordinarily presents no federal question. But a constitutional claim is properly presented to this Court when the state tribunal has acted to "deprive a person of all existing remedies for the en-

forcement of a right which the State has no power to destroy, unless there is, or was, some real opportunity to protect it." *Brinkerhoff-Faris Co. v. Hill,* 281 U.S. 673, 682 (1930). In the case at bar, the only mechanism available for the petitioner's presentation of newly discovered evidence and evidence of fraud was by means of a Trial Rule 60(B) motion. Denial of the hearing requisite to the entry of any order on that motion renders the August 28, 1979, and November 8, 1979, orders of denial constitutionally infirm.

Where the opportunity to be heard has either been afforded or denied the petitioner in accordance with a court rule or procedural statute fairly and conscientiously applied, the judgment will not be disturbed. But "state procedural requirements which are not strictly or regularly followed cannot deprive [this Court] of the right to review" constitutional claims. *Barr v. City of Columbia,* 378 U.S. 146, 149 (1964). *See N.A.A.C.P. v. Alabama,* 377 U.S. 288 (1964), and *Konigsberg v. State Bar,* 353 U.S. 252 (1957). *And compare Proctor v. Warden, supra,* 435 U.S. at 560, where this Court exercised its authority to vacate judgments conferred upon it by 28 *U.S.C.* § 2106, remanding the case to the federal court of appeals for correction of plain error.

Accordingly, this case should be remanded to the Indiana Supreme Court for a full Trial Rule 60(D) hearing on the petitioner's Motion for Relief From Judgment.

II. IN REQUIRING THE PETITIONER TO PRESENT BY A MOTION DIRECTLY TO THE INDIANA SUPREME COURT HIS EVIDENCE THAT THE DISCIPLINARY PROCEEDINGS WERE COMPROMISED BY FRAUD AND PREJUDICE, THAT COURT FAILED

TO ASSURE HIM THE NEUTRAL AND UNBIASED FORUM REQUIRED FOR DUE PROCESS.

The State of Indiana "has a legitimate interest in determining whether the petitioner has the qualities of character and the professional competence requisite to the practice of law." *Baird v. State Bar of Arizona,* 401 U.S. 1, 7 (1971). *See In re Primus,* 436 U.S. 412, 422 (1978). Yet disbarment, though intended to protect the public interest, "is a punishment or penalty imposed on the lawyer." *In re Ruffalo,* 390 U.S. 544, 550 (1968). Hence, the requirements of procedural due process must be met before a state can exclude a person from practicing law." *Willner v. Committee on Character,* 373 U.S. 96, 102 (1963). Due process connotes a "fair hearing" before a "fair tribunal." *Irvin v. Dowd,* 366 U.S. 717, 722 (1961). The presumption that the trier of fact is able to render an objective verdict "cannot foreclose inquiry as to whether, in a given case, the application of that rule works a deprivation of . . . due process." *Irvin v. Dowd, supra,* 366 U.S. at 723.

In *Irvin v. Dowd, supra,* in *Groppi v. Wisconsin,* 400 U.S. 505 (1971), and in numerous other cases, this Court has directed that an accused be afforded a change in venue where local prejudice or community excitement may preclude an objective hearing. In the case at hand, the petitioner, by his Motion For Relief From Judgment, raised serious and substantial issues of fraud and prejudice practiced against him in the hearing phase of the disciplinary proceedings. (Motion For Relief From Judgment, Paragraphs 1(dd), 1(hh), 4(bb), 4(aa-15), and 6, being pages A-12, A-13, A-33, A-45 and A-48 of the Appendix). It is the petitioner's contention here that the Indiana Supreme Court could not, in these circumstances, review these charges with the objectivity the Constitution requires.

Proof of actual bias is not required. Any situation which may dissuage "the average man as judge . . . not to hold the balance nice, clear and true between the State and the accused." *Ward v. Village of Monroeville,* 409 U.S. 57, 60 (1972), *quoting from Tumey v. Ohio,* 273 U.S. 510, 534 (1927). That one person occupies "two practically and seriously inconsistent positions, one partisal and the other judicial, necessarily involves a lack of due process of law." *Id., quoted at* 409 U.S. 60. A person accused of unlawful or unethical conduct is "entitled to a neutral and detached judge in the first instance." 409 U.S. at 61-62. *Accord, Connally v. Georgia,* 429 U.S. 245, 250 (1977).

The accused need not prove the absence of such neutrality and detachment. Any requirement "that an accused must show special prejudice to his particular case" would, paraphrasing, 'require too much and protect too little.' *Ward v. Village of Monroeville, supra,* 409 U.S. at 61. In light of the essentially "partisan" interest of the Indiana Supreme Court in maintaining the public image of those who practice before its courts, and, perforce, its own credibility, that tribunal must be presumed to encounter the "possible temptation" to disregard the petitioner's presumption of innocence. *Id.* at 60. Failure to insure detachment and thorough objectivity at all stages of the disciplinary proceedings is, in a definitional sense, a violation of due process.

Compare In re Murchison, 349 U.S. 133 ( ), cited and discussed by this Court in *Mayberry v. Pennsylvania,* 400 U.S. 455, 465 (1971). It was held in the former case that "since the judge who sat as a one-man grand jury was part of the accusatory process he 'cannot be, in the nature of things, wholly disinterested in the conviction or acquital of those accused,' " and hence could not try for contempt those witnesses who refused to answer his questions. 349 U.S. at 137, *quoted at* 400 U.S. 465. Substitution of another judge was there required, as substitution of some other tribunal should be required here.

Yet, any challenge to the jurisdiction of the Indiana Supreme Court to review and adjudicate impartially the charges brought against the petitioner by its Disciplinary Commission as complainant, must confront the familiar "rule of necessity." The court may raise the defense that it is the only tribunal with authority to hear and act upon charges of attorney misconduct, and thus contend that its ruling in the present instance cannot be impeached despite the imputation either of a bias inherent in the structure of the disciplinary system, or of a bias manifested against the petititioner personally. Nevertheless, constitutional misgivings about the application of the rule of necessity have been voiced by authoritative commentators.

Thus, Professor Davis has stated: "Courts are not always helpless to correct injustice, merely because the only tribunal which can adjudicate a case is disqualified. Courts can hold that a system calling for adjudication by officers who are disqualified is a denial of due process of law." 1 *Davis, Administrative Law Treatise,* § 12.04 at 165 (1958). Accordingly, "the extraordinary cases which impel courts to resort to the rule of necessity may often deserve extraordinary scrutiny by the reviewing court. If the administrative process fails to correct a disqualifying bias, the reviewing court should supply the correction." *Id.* at 166. That correction should now be applied by this Court while ruling, as a matter of first impression, upon the constitutionality of the rule of necessity applied, whether tacitly or expressly, to disbarment proceedings.

CONCLUSION

For the reasons, and upon the grounds, set forth herein, the petitioner prays that this Court grant the Petition and issue a Writ of Certiorari to the Indiana Supreme Court.

Respectfully submitted,

Lewis T. Wireman, Pro se
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Lafayette, Indiana 47905
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Appendices

APPENDIX A(1)

IN THE
SUPREME COURT OF INDIANA

In the Matter of
LEWIS T. WIREMAN

Cause No. 575 S 122

ORDER DENYING MOTION FOR RELIEF FROM JUDGMENT

Comes now Respondent in this cause and moves this Court to vacate and set aside its judgment and order entered on October 14, 1977, in this action.

This Court, being duly advised now finds that Respondent has failed to show any valid ground for the relief sought and that, accordingly, said motion should be denied.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Respondent's Motion for Relief from Judgment is hereby denied.

IT IS FURTHER ORDERED that the Clerk of this Court shall forward a copy of this Order to Mr. Lewis T. Wireman, 3908 North Orchard Court, Lafayette, Indiana 47905; and to Mr. David B. Hughes, 814 I.S.T.A. Building, 150 W. Market Street, Indianapolis, Indiana 46204.

DONE this 28 day of August, 1979.

RICHARD M. GIVAN
Chief Justice of Indiana

All Justices Concur.

APPENDIX A(2)

**IN THE
SUPREME COURT OF INDIANA**

In the Matter of
LEWIS T. WIREMAN

Cause No. 575 S 122

ORDER DENYING MOTION FOR RECONSIDERATION OF RULING ON RESPONDENT'S MOTION FOR RELIEF FROM JUDGMENT

Comes now petitioner, Lewis T. Wireman, and files his Motion for Reconsideration of Ruling on Respondent's Motion for Relief from Judgment and his Petition for Appointment of Counsel in the above-captioned cause.

And this Court, being duly advised, now finds that Petitioner's Motion for Reconsideration and Petition for Appointment of Counsel should be denied.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Petitioner's Motion for Reconsideration and Petition for Appointment of Counsel be denied.

IT IS FURTHER ORDERED that the Clerk of this Court shall forward a copy of this Order to Mr. Lewis T. Wireman, 3908 North Orchard Court, Lafayette, Indiana 47905; and to Mr. David B. Hughes, 814 I.S.T.A. Building, 150 W. Market Street, Indianapolis, Indiana 46204.

DONE this 8th day of November, 1979.

ROGER O. DEBRULER
Acting Chief Justice of Indiana

All Justices Concur.

APPENDIX B(1)

**IN THE SUPREME COURT
OF THE
STATE OF INDIANA**

In the Matter of
LEWIS T. WIREMAN

Cause No. 575 S 122

MOTION FOR RELIEF FROM JUDGMENT

Respondent moves the Court to vacate and set aside the judgment made and entered in the above-entitled action on October 14, 1977, for the reasons hereinafter set for, and for such other reasons as the Court may upon its own motion deem appropriate under the circumstances of this cause.

Respondent has, in support of his stated reasons, incorporated arguments immediately following and in conjunction with such reasons. In addition, Respondent has attached hereto certain affidavits and exhibits to be considered in support of reasons. Finally, Respondent offers support in the form of memorandum to support various stated reasons.

Respondent would call it to the attention of this honorable Court that the record of proceedings are voluminous and that Respondent's brief filed herein is lengthy. Respondent requests the indulgence of the Court in making reference to the record of proceedings and briefs without specificity as to page or portion thereof and suggests to the Court that the errors alleged are such that they are not susceptible of specific location and that your Respondent believes that it will of necessity require a complete examination of all proceedings, motions and briefs filed in this proceeding in passing judgment upon claimed errors.

1. Mistake, surprise and excusable neglect, to-wit:
   (a) The Court refused to pass upon the merits of

Respondent's motion to correct errors heretofore filed in these proceedings.

Respondent offers the arguments contained within other grounds specified within this motion, supporting affidavits attached hereto and incorporated herein by reference, memorandum of law, the complete record of proceedings filed herein and his brief heretofore filed in this matter, the same being voluminous and unduly burdensome to reproduce for this motion are incorporated herein by reference.

(b) Without repetition the Respondent here restates and offers in support of this motion all of the grounds and supporting information contained in Respondent's motion to correct errors, the same now being a part of the record of proceedings in this matter, and further attaches a copy of said motion to this petition as Exhibit "A", the same to be incorporated herein by reference.

(c) The Respondent was prevented, by ruling of the hearing officer, in response to an objection from the Disciplinary Commission, from introducing *any* testimony of Paul Banton. The basis of the objection was that Banton had in his possession a transcript of testimony given at the hearing by Richard Dean Smith, a witness for the Commission, which said transcript was prepared by Respondent's attorney from a tape recording made at the hearing with the consent of the Court, and provided Banton by Respondent's attorney specifically for the purpose of pointing out wherein witness Smith had lied.

Respondent points out to the Court that the complaint filed against Respondent specifically named Mr. Banton as being involved in criminal activity together with Respondent and was the only person who could corroborate Respondent's evidence and refute the testimony of Commission witness Smith. It is interesting to note that the Commission did not call Mr.

Banton as their witness although it is believed that Respondent will be able to demonstrate why if he is permitted a rehearing in this matter.

No showing was made that Mr. Banton had been exposed to any portion of the proceeding other than a copy of said transcription. Mr. Banton would, had he been permitted to testify, give valuable testimony relevant to refuting other testimony introduced by other Commission witnesses. The deprivation of the benefit of Mr. Banton's testimony denied Respondent due process of law under both state and federal constitutions.

(d) The Respondent was prevented, by the hearing officer, from introducing the testimony of Phyllis J. Wireman, even though no showing was made that she was exposed to any portion of the proceeding held in this matter except upon the testimony of Laura Shephard, a witness called by the Disciplinary Commission and adverse to the Respondent and even though no evidence was introduced to demonstrate that Phyllis J. Wireman may have been exposed to any of the proceeding in this matter other than a portion of Disciplinary Commission's witness Holmes, and even though a denial of the benefit of the testimony of Phyllis J. Wireman denied to Respondent due process of law under both the state and federal constitutions.

(e) After the hearing officer's ruling, Respondent's witness, Phyllis J. Wireman, was prevented from testifying about *any matter which had been discussed at the hearing* even though the Disciplinary Commission had presented its case in chief and even though Laura Shephard, Disciplinary Commission witness, adverse to Respondent, and being the only testimony that Phyllis J. Wireman had listened to any recorded evidence, clearly states that Respondent asked her to listen only to the testimony of Disciplinary Com-

mission's witness Holmes and was for the purpose of pointing out where Holmes had lied and even though Laura Shephard testified to the effect that Holmes had indeed lied.

(f) The hearing officer refused to strike the direct examination of Disciplinary Commission's witness David Banton, even though Respondent was denied the right of cross-examination of such witness and even though said David Banton was named in the complaint against the Respondent as a party to the alleged misconduct of Respondent. The effect of the hearing officer's ruling shifted the burden of proof and the burden of going forward with the evidence to the Respondent in violation of the rules of evidence and in contravention of the demands of due process under both the state and federal constitutions.

(g) The hearing officer refused to admit the testimony of Respondent's witness Paul Banton and Phyllis J. Wireman even though there was no showing that either witness had discussed testimony they would give with any other witness outside of the Courtroom.

(h) The hearing officer ruled a private hearing as requested by Respondent and as permitted by rule relative to discipline of attorney was tantimount to a separation of witnesses even though Rule 22 clearly makes no such distinction, and even though it was clearly shown from the evidence that neither the Respondent, his attorney, nor the hearing officer considered the same as a notion for separation of witnesses. It is clear from the records filed herein that the hearing officer permitted the Disciplinary Commission's attorney to interpret for him the meaning of a private hearing, thus abrogating his duties as hearing officer in favor of the Disciplinary Commission and its attorney.

(i) The ruling of the hearing officer Dowling prevented testing of Disciplinary Commission's witness Laura Shephard's testimony by Respondent's witness Phyllis P. Wireman even though the record clearly shows that Laura Shephard testified before the hearing officer's ruling and could not possibly have influenced the testimony of Phyllis J. Wireman.

(j) The ruling of hearing officer Dowling in refusing to receive testimony of Respondent's witness Paul Banton and Phyllis J. Wireman was so broad that it prevented them from testifying as to *any* evidence, either probative or going to credibility of witnesses since it was made after presentation of Disciplinary Commission's case in chief.

(k) The refusal of the hearing officer prevented Respondent from discovering the full extent of immunitive and grants of favorable treatment and promises of favorable treatment of Disciplinary Commission's witness Richard Dean Smith.

(l) Hearing officer denied Respondent the right of cross-examination of Disciplinary Commission's witness Smith.

(m) Hearing officer refused to admit into evidence taped interviews by Disciplinary Commission's witness Smith and investigative officer's working for and on behalf of the Disciplinary Commission.

(n) The record is clear that the hearing officer was more interested and sympathetic toward Disciplinary Commission's witness Smith than in determining truthfulness of allegations against Respondent.

(o) Disciplinary Commission's attorney Hughes and hearing officer Dowling almost daily conferred with each other out of the presence of Respondent and Respondent's attorney, some conferences lasted for several minutes.

(p) The record will show that on several different occasions hearing officer refused to permit examina-

tion of witnesses at trial that may lead to evidence to support Respondent's position, even though Respondent was denied effective discovery prior to the hearing.

(q) The hearing officer insisted upon conducting the hearing herein during the same period of time that a grand jury was conducting an investigation on the same allegation contained in the complaint filed against Respondent even though, as the record will show, Respondent requested on at least four different occasions that the hearing be delayed until after said grand jury inquiry and even though all local news media, as well as other news agencies throughout the state of Indiana, daily, throughout the entire four months involved in the hearing published derogatory, false and misleading statements about Respondent and in general used the fact that Disciplinary proceeding against Respondent as support for a reason for grand jury inquiry and vice versa and even though the conducting of said hearing at said time denied Respondent due process of law both at the hearing held in this matter and in the stated grand jury proceeding.

(r) The hearing officer denied Respondent the right of presenting evidence of a political conspiracy against Respondent, the presentation of which would not only have been a direct attack upon the truthfulness of the allegations contained in the complaint against Respondent, but would further have been a direct attack upon evidence presented by Disciplinary Commission's witnesses and upon the credibility of such witnesses. He permitted such witness called by Respondent to hide behind the Indiana Shield law as interpreted by Disciplinary Commission's attorney and the attorney for the witness, thus abrogating his duty as hearing officer to make a determination upon presentation of evidence concerning waiver of benefits of Shield law, extent of protection afforded by the

Shield law, whether the questions propounded called into effect the Shield law and whether or not the witness had demonstrated the right to invoke the Shield law.

(s) Hearing officer's denial of Respondent's right of presenting evidence of a political conspiracy against Respondent prevented him from proving that the State Police officers who conducted investigations against Respondent on behalf of the Disciplinary Commission were prejudice and biased against Respondent and purposely provided the Disciplinary Commission evidence which they knew to be false and given by Disciplinary witnesses for no other reasons than promise of favorable treatment in exchange for such false testimony.

(t) The hearing officer's denial of Respondent's right of presenting evidence of a political conspiracy against Respondent and from interrogation of news media personnel under oath prevented Respondent from proving pressures brought to bear upon officials of the Disciplinary Commission to file a complaint against Respondent and to properly inquire into the truthfulness of Disciplinary witnesses and truthfulness of evidence proffered by them. An examination of the records and briefs filed in this matter leaves but one conclusion as to the truthfulness of Disciplinary Commission's chief witness Smith, that conclusion is that his testimony was completely untrustworthy and not worthy of being presented in this hearing. The only conclusion that can be drawn from all the evidence, viewed on a whole, is that the Commission was intentionally misled by its investigation officers and news media personnel or it willfully ignored acceptable rules of fair play, honesty and professional responsibility in vouching for and presenting such evidence.

(u) An examination of all records, documents and briefs forming the record in this matter demonstrates

that the Disciplinary Commission's attorney intentionally frustrated efforts to determine the truth or falsity of the allegations contained in the complaint against Respondent, but rather can be viewed as intentional efforts to prevent presentation of true facts to the hearing officer.

(v) An examination of records of proceedings reveals that the net result of procedures employed during the entire proceeding amounted to a shifting of the burden of proof and burden of going forward with the evidence to the Respondent.

(w) An examination of the records of proceedings reveals that the hearing officer and at the instance of the attorney for Disciplinary Commission denied discovery before the hearing and later denied inquiry and search for truth at the hearing.

(x) An examination of the records of proceedings reveals that the hearing officer, at the instance of the attorney for the Disciplinary Commission, denied Respondent the right to inquire in to areas that a witness may have testified to at a grand jury proceeding claiming benefit of secrecy oath, but permitted Disciplinary Commission to inquire freely.

(y) An examination of the records of proceedings reveals that the hearing officer either did not understand the meaning, purpose and limitation of oath administered by a grand jury or that his rulings relative thereto were based upon prejudice toward Respondent or upon favoritism toward Disciplinary Commission.

(z) An examination of the entire proceeding demonstrates that the Disciplinary Commission and its attorney violated that part of Rule 23, Section 1 which reads ". . . . and to protect attorneys from unwarranted claims of misconduct."

(aa) The hearing officer demonstrated prejudice toward the Respondent when he permitted the taking

of certain depositions but refused to require answers from deponants. In addition to frustration of attempts at discovery, there was a considerable waste and loss to Respondent of money, time and energy.

(bb) The holding of Discipline hearing at the same time that a grand jury investigation was being conducted was totally unfair to Respondent. A bootstrapping affect occurred. The grand jury would have looked foolish not to indict if the Supreme Court pursuant to this proceeding later ordered discipline; the hearing officer would have looked foolish had he not made a finding for disbarment after grand jury indictment handed down. The fact that the same people involved, both by way of witnesses and investigation, only added to the unfairness. The self serving interest of the news media taken in conjunction therewith amounted to a total failure of justice. A failure of justice is always worse than any supposed wrong which it may seek to prevent and cannot be allowed to stand.

(cc) An examination of the records in this matter and a review of the Disciplinary Commission's attorney's answer brief leaves one with the impression that he believes himself to have special standing with this high Court, flowing merely from his position as the Disciplinary Commission's attorney. It is apparent that he has either lied in his brief or is so flagrantly careless in its preparation as to apper to completely disregard his responsibility to this Court. Not only does it appear that he deems it unnecessary to argue the case to this Court, an examination of his brief will reveal that few of his arguments are even relevant to the issues raised in Respondent's brief. Most of his authorities are either misinterpreted or are an intentional effort to mislead this high Court. He has failed even to address himself to many of Respondent's arguments, but rather states that ". . . as this Court is aware, the hearing officer in this case

was formerly a Judge who is possessed of many years of experience on the trial court bench", thereby implying that the Court should look to hearing officer's findings and recommendations as determinative of the issues involved. Since Mr. Hughes has deemed it wise to call this fact to the Court's attention, it seems equally important that it be pointed out to the Court, and as the Court may be aware, the hearing officer's reputation as a trial judge among many lawyers is one of incompetence and insufficient understanding of the law. It is believed that the record of the proceeding in this matter will bear out that reputation. Indeed, it may be the very reason for his relying so heavily upon Mr. Hughes' opinion in making his ruling. In any event, through the trial it was apparent to many that the relationship between hearing officer Addison Dowling and Disciplinary Commission's attorney, David Hughes, for whatever reason, is such that they should not participate in the same disciplinary proceeding together.

(dd) An examination of the record of proceedings and briefs filed herein will reveal that the totality of the proceeding are so grossly one-sided toward the Respondent as to render the entire proceeding unfair. It is felt that the sole purpose of the proceeding, from the point of view of all parties except the Respondent, was but to fulfill a formality to comply with the requirement of a hearing, with frustration of Respondent's efforts to exonerate himself.

(ee) An examination of the records of proceedings and briefs filed herein reveals an untold number of times its admission of hearsay testimony and evidence proffered by the Disciplinary Commission. The Commission appears to need to only ask and the same was admitted.

(ff) An examination of the record reveals that rules of evidence were time after time erroneously

applied in favor of the Discipinary Commission and contrary to Respondent's interest.

(gg) An examination of the record reveals that on numerous occasions, Respondent was limited in the scope of direct and cross-examination to his detriment while the Disciplinary Commission was given unreasonable breath of inquiry.

(hh) The relationship created by the Supreme Court establishing the Disciplinary Commission, appointment of its members, establishment of rules of procedure, accepting filing of complaints by said Commission, appointment of hearing officers, and review of the proceedings, seems to create an atmosphere among members of the Commission, its officers and trial attorney, and the hearing officers, that they must be supportive of each other. That the reason for their existence is to punish attorneys and not to determine truth in accordance with principals of fairness and law. Since they, like all of us, are subject to human frailties it may be understandable, though not to be sanctioned, that Commission members and its officers may be over zealous in their efforts and over estimate their importance in the various systems of human relationships. An examination of the records and proceedings in this case reveals that the hearing officer also identified himself with the same assumptions and aligned himself with the Disciplinary Commission. Whether conscious or unconscious is of importance only in other contexts. What is of importance is that in this matter a manifest injustice occurred. An injustice which not only cannot be sanctioned, but one that cries out for correction.

(ii) An examination of the entire proceeding in this matter will demonstrate that the totality of the proceeding were conducted in such a manner and under such circumstance as to be wholly favorable toward the Disciplinary Commission and contrary to

the interest of Respondent, thus denying him both procedural and substantive due process of law. In support of this contention, Respondent incorporates by reference the arguments fostered in his briefs filed with this Trial Court, his arguments fostered in support of other contentions raised by this motion and any and all other records, transcripts and motions forming a part of the records of proceedings, it being too voluminous to repeat the arguments and set out the proceeding in toto.

2. For any and all grounds stated in Respondent's motion to correct errors heretofore filed w .h this Trial Court on December 16, 1977, which said motion not being passed upon by this Trial Court all as is now a part of the Court's records, a copy of which motion to correct errors is attached hereto, marked "Exhibit A" and incorporated herein by reference.

3. Newly discovered evidence, which by due diligence could not have been discovered in time to move for a review by the Trial Court in Respondent's motion to correct errors:

(a) Statement made by the hearing officer to his reporter as set out and supported by affidavit marked "Exhibit B", attached hereto and incorporated herein by reference. (Affidavit, paragraph 16-17).

Respondent contends that such statement by the Trial Court's hearing officer demonstrated prejudice toward Respondent and that the Trial Court's hearing officer had already reached conclusions of law and findings of facts against Respondent. Respondent further offers these arguments in addition to others contained in this motion to help explain errors occurring at said hearing conducted by said hearing officer and his findings, conclusions and recommendation on behalf of the Trial Court.

(b) Statements made by Disciplinary Commission witness Richard Dean Smith to Mike Sweeney as set out in "Exhibit B" attached hereto and incorporated herein by reference (Affidavit, paragraph 18). Respondent went to great lengths to determine the extent of immunities, favorable treatment and promises of favorable treatment extended witness Smith in exchange for his testimony. An examination of the record will show that the Trial Court's hearing officer largely prevented such inquiry, refusing the discovery prior to the hearing and preventing inquiry at the hearing. Nowhere in the record is there a clear understanding of what those immunities and promises were. Nowhere in the record is there any information such as contained in paragraph 18 of "Exhibit B". It will be readily determinable upon examination of paragraph 18, that the Disciplinary Commission is charged by Smith as being directly involved in promises of favorable treatment and parole for Smith. It is believed that upon hearing that members of the Disciplinary Commission staff and its investigative personnel will be shown to have conspired by and between themselves, and by and between themselves and Smith, to deprive Respondent of, and to interfere with his civil rights. It is believed that at a fair and impartial hearing, Respondent will be able to demonstrate, not only that Smith's testimony against Respondent is false, but that either certain members of the Commission's staff or of its instigators (sic) or both, knew the same to be false.

(c) Disciplinary Commission witness Smith was promised special treatment and even parole from federal prison in exchange for his testimony at the hearing before the hearing officer in the subject matter as set out in "Exhibit B" attached hereto and incorporated herein by reference (Affidavit, paragraph 18). Arguments proffered in favor of (b) above are included herein by reference without repetition.

(d) Disciplinary Commission officers and/or its investigators promised Commission's witness Smith special treatment and even parole from federal prison in exchange for his testimony at the hearing held before the Trial Court's hearing officer as set out in "Exhibit B" attached hereto and incorporated herein by reference (Affidavit, paragraph 18). Arguments proffered in favor of (b) above are included herein by reference without repetition.

(e) Disciplinary Commission's witness Smith has made many statements to various persons and on several different occasions, attempting to implicate Respondent in illegal activity. An examination of each statement will readily determine that no two are alike. Indeed it is extremely rare when a single fact can be determined to be similar in even any two separate statements. Indeed witness Smith contradicts himself over and over again in the same statement. The sheer number and lengths of statements by Smith prevents their being reproduced in this motion. A hearing is necessary to point out the vast number of discrepancies.

Mr. Smith's reputation as a liar is well known among police officers and other public officials including the police officers assigned to investigate allegations against Respondent.

Oscar Gates, investigation officer for the Disciplinary Commission admitted to the prosecuting attorney for Tippecanoe County that Smith would make a false statement against anyone and cannot be believed. Yet Smith is vouched for by the same Oscar Gates, investigator for the Disciplinary Commission, and is protected by David Hughes, attorney for Disciplinary Commission at the hearing held in the instant matter before this Trial Court's hearing officer. An examination of the record will demonstrate the extent of Mr. Hughes' efforts to prevent Respondent from showing that witness Smith is indeed a liar.

In addition to the testimony given by Smith at the Disciplinary hearing involving Respondent, Smith has made statements referred to in the record, some of which were admitted and some of which were not admitted. He has also made statements at a trial held in May of 1977 and has made statements to Paul Banton in May of 1977. He has made statements as referred to in 3(b) above and has further made statements to federal officials which Respondent has been unable to obtain. Again, upon hearing, Respondent will be able to demonstrate the almost total difference in the account of supposed incidents given by witness Smith. It will be shown that not only is his reputation in the community, that of a liar, but that he is, in fact, a liar.

Respondent was frustrated in his discovery efforts prior to hearing, and was again frustrated at hearing. Under all of the circumstances of this matter, it was impossible for Respondent to have a fair hearing before an impartial hearing officer. Respondent has since the hearing learned of additional statements made by Disciplinary witness Smith, and upon available information believes them to be further contradictory and knows them to be false. All statements made by Disciplinary Commission's witness Smith are false and made for the purpose of obtaining favorable treatment as promised by prosecuting authorities and police officers, some of whom served as investigative officers for the Disciplinary Commission in this proceeding. (Affidavit, paragraph 18-19).

(f) Respondent learned in May, 1978 that Disciplinary Commission's witness Gates had conspired with Lafayette Police officer Eberle, Lafayette City Councilman Michael C. Reily and WASK news director Michael Piggott to use perjured testimony against Respondent and in other ways to deprive Respondent of due process of law (Affidavit, paragraphs 18, 19 & 20).

(g) Oscar Gates, investigator for Disciplinary Commission was hostile toward Respondent and Respondent's attorney, Robert Mucker, for having made available to George Hanna, Special Prosecutor of Tippecanoe County, Indiana, a statement by Richard Dean Smith, wherein Smith accused Gates of attempting to get Smith to commit perjury, a felony under the laws of Indiana (Affidavit, paragraphs 18, 19 & 20).

(h) Oscar Gates conspired with George Hanna, to cause Disciplinary Commission's attorney Hughes to believe Disciplinary Commission's witness Smith's testimony even though both Gates and Hanna knew Smith's testimony as applied to Respondent was false and made for the purpose of promise of immunity and parole. (Respondent incorporates arguments in Affidavit, paragraphs 18, 19 & 20 herein by reference and further supports his contentions herein stated by paragraph 21 of said Affidavit).

(i) That information made available to Respondent in May, 1978 proves that Disciplinary Commission's witness Smith and Disciplinary Commission's witness David Banton were lying in their testimony given in this proceeding against Respondent. (Affidavit, paragraphs 18, 19, 20, 21 & 22).

(j) That Trial Court's hearing officer Addison Dowling and Disciplinary Commission's attorney violated rules of conduct by conferring by and between themselves, outside the presence of Respondent and/or his attorney, regarding the subject matter of this action. (Affidavit, paragraph 23)

(k) Since the hearing in this matter, Respondent has learned that Laura Shephard and Phyllis J. Wireman, Respondent's then wife were engaged in a homosexual relationship, that Laura Shephard was in love with Respondent's wife and that she resented Respondent for interfering in that relationship.

Testimony by Laura Shephard was given as the result of that resentment and because of a confrontation between Laura Shephard and Respondent's then wife and that Laura Shephard swore falsely against Respondent because of said confrontation and fight between she and Phyllis J. Wireman. That Laura Shephard believed she could cause a divorce to occur between Respondent and Phyllis J. Wireman and in the event that occurred, she could again resume her homosexual activities with Phyllis J. Wireman. (Affidavit, paragraph 24)

(l) Respondent learned that Laura Shephard sliced all four of Respondent's tires. (Affidavit, paragraph 24)

(m) That Disciplinary Commission's witness Laura Shephard is a known lesbian. (Affidavit, paragraph 24)

(n) That Disciplinary Commission's witness Laura Shephard and Respondent's wife Phyllis J. Wireman were seen indulging in homosexual activities. (Affidavit, paragraph 24)

(o) That Laura Shephard lied in her testimony given at the herein hearing in several important instances. (Affidavit, paragraph 24)

(p) That Laura Shephard provided officer Holmes with descriptions of guns and serial numbers and maybe even photographs before he had seen any guns. That Holmes had her hand written descriptions and serial numbers when he saw guns in petitioner's home. That none of the guns located in Respondent's home were ever identified as stolen. That Laura Shephard had keys to Respondent's automobile and is believed to have put the hand gun in the trunk thereof. The evidence is uncontested that Respondent did not believe same gun he had in his possession. (Affidavit, paragraph 24)

(q) That Disciplinary Commission's witness lied when she said guns removed from Respondent's home remained in her automobile trunk. (Affidavit, paragraph 24)

(r) That Respondent has learned that Disciplinary Commission's witness Laura Shephard lied about lock boxes and contents thereof. (Affidavit, paragraph 25)

(s) That Trial Court hearing officer submitted his claim in this matter for $5050.00 and that same is unreasonable in view of the proceedings, but does indicate his interest in sitting as hearing officer in this matter. (Affidvait, paragraph 26)

(t) That Michael Piggott, grieviant in the original petition filed against Respondent advised Respondent that his original petition contained all information contained in the amended petition filed by the Disciplinary Commission, but that they would not permit him to file the same. He further advised that his petition was prepared by his attorney Richard Donahue. Respondent therefore was denied the right to face his accuser and further denied the right to notice and the right to answer the original and amended complaint and further was denied the right to have the original grievance investigated prior to filing of a complaint as required by the rules of procedure in disciplinary proceedings. (Affidavit, paragraph 27)

(u) Disciplinary Commission's witness Smith received compensation from Tippecanoe County Treasurer for time involved in Disciplinary proceeding. Respondent believes that this was with the full understanding of Disciplinary Commission's officers and/or investigators, and pursuant to an agreement by and between such persons and George Hanna, Special Prosecutor of Tippecanoe County and witness Smith. (Affidavit, paragraph 28)

(v) Respondent has reason to believe that the failure of Disciplinary Commission's witness David Banton to appear for cross-examination was due to payment to him by George Hanna, Special Prosecutor for Tippecanoe County. Respondent knows that no special efforts have been made to cause his return by said Hanna. Respondent has examined the transcript of David Banton's testimony before a grand jury called by Hanna and from such examination it is apparent that it is almost completely at odds with the testimony given at hearing on this matter by Disciplinary Commission's witness Smith and will be further evidence to completely discredit Smith. It is believed that Disciplinary Commission's attorney, because of his involvement with Oscar Gates, investigator for the Commission and for Hanna and further because of his close association throughout these proceedings with George Hanna knew that the testimony of Banton would contradict that of Smith and that of Disciplinary Commission's witness Laura Shephard. (Affidavit, paragraph 29)

(w) That Respondent has learned that immunities from prosecution were granted to Disciplinary Commission's witness David Banton and Richard Dean Smith by both State and Federal authorities in exchange for testimony against Respondent at both grand jury proceedings and in proceedings in this matter. (Affidavit, paragraph 30)

(x) Respondent has learned that wholesale price of silver dollars in May of 1974 was $2.60-$2.80 each. That he could purchase any quanity he wished at that price directly from C & S Coin shop in Lafayette, Indiana and did purchase all he wanted at that price. (Affidavit, paragraph 31)

(y) Respondent has learned that Bill Horn carries much hatred for me because of the procedures of Lafayette City Court. (Affidavit, paragraph 32)

(z) Respondent has learned that Bill Horn, Deputy Sheriff sued by Disciplinary Commission's witness David Banton said that if Banton won the law suit Banton would never live to enjoy it. Respondent has learned that because of the great amount of publicity involved, Horn believes Respondent represented Banton in that suit. (Affidavit, paragraph 32)

(aa) Respondent has discovered that Disciplinary Commission's witness Larry Mathers had no fear of me as City Judge. That he knew that I would not send him to jail but that he would only have to pay support. He had no objection to Respondent sitting as judge in his matter because he always assumed that Respondent liked him. (Affidavit, paragraph 34)

(bb) Respondent has discovered whereabouts of a witness that will prove Disciplinary Commission's witness Smith lied when he said Respondent was at the Frame shop before Court that Respondent discussed any illegal conduct with Disciplinary Commission's witness Smith or David Banton or with Paul Banton, or that he ever saw Respondent with any type of gun, or purchase any type of gun from anyone, or that Respondent tried to sell Smith an auto or said that Smith owed Respondent $400.00. (Affidavit, paragraph 35)

(cc) That the Supreme Court has amended rules of procedure applicable to Disciplinary proceedings and that Respondent should be permitted the benefit of discovery in this matter. Had Respondent been permitted discovery prior to hearing or had not been frustrated in his efforts at discovering the truth at the hearing held before the Trial Court's hearing officer, Respondent would have been able to prove that Disciplinary Commission's witnesses Richard Dean Smith, David Banton, Laura Shephard and Richard Holmes were, in fact, lying. (Affidavit, paragraph 36)

(dd) The U.S. Supreme Court has recently cut into the application of Shield Laws and immunity from discovery of information pertinent to the interest of a party in litigation. Respondent urges the Trial Court to apply rationale of the Court's recent rulings in this area to the instant matter. (Affidavit, paragraph 37)

(ee) At page 28 of Disciplinary Commission's attorney's brief he makes a statement that all witnesses were admonished not to discuss matters that transpired at the hearing to persons outside the hearing. This statement is untrue and said attorney knew that the same was untrue, but was made by him in an effort to add to the record of the proceedings, matters which were not part of the record. (Affidavit, paragraph 37)

(ff) Respondent has discovered a witness who will testify that Disciplinary Commission's witness Richard Dean Smith told him that the reason he failed to appear for trial on a matter pending before Respondent in the Lafayette City Court was because he believed that Respondent did not like him and that if convicted by the jury, the witness would be sure to receive the maximum term of imprisonment and maximum fine. That said witness failed to appear for trial but instead got drunk. That said witness was arrested on a warrant for failure to appear and that bond was fixed at $5000.00. That said Smith was unable to post bond and remained in jail until the matter was tried to a jury. (Affidavit, paragraph 39)

(gg) Respondent has discovered a witness who will testify that Disciplinary Commission's witness Smith once after being acquitted of a criminal charge, made the statement in open court that he was guilty but had beaten the system at its own game and that said Smith often bragged of this account. (Affidavit, paragraph 39)

(hh) That testimony of Disciplinary Commission's witness David Banton, given at another hearing denied that I ever talked to Disciplinary Commission's witness Smith about any of his cases pending before Respondent as Judge or that I ever talked to Banton or any other person regarding cases pending before Respondent. That said Banton stated that Respondent was very strict about the procedure and running of his Court. (Affidavit, paragraph 40)

(ii) Special Prosecutor George Hanna has made public statements, the same being carried by local news media, that all interviews with all persons was recorded on tape. The records of grand jury hearings specifically refer to conversations with Disciplinary Commission's witness Richard Dean Smith and David Banton. Respondent has reason to believe that several of the statements are not only contradictory of statements given by said witness at the hearing held herein but that many of said statements will exculpate Respondent of any involvement of illegal conduct. That refusal to permit prehearing discovery and the in-hearing frustration of Respondent's efforts to discover information prevented Respondent from bringing the information contained in said statement before the hearing officer to the great prejudice of Respondent's effort. Respondent further says that such statements will further show that said Smith was granted immunity far beyond burglaries that he committed but will also show that his immunities extended to all past criminal action on his part, whether, state or federal and whether in Tippecanoe County, Indiana or elsewhere. (Affidavit, paragraph 41)

(jj) That Respondent was acquitted of any conspiracy including the alleged burglary of the residence of Maurice Callahan or of any theft of property belonging to Callahan. (Affidavit, paragraph 42)

(kk) That Respondent was acquitted of any conspiracy involving the alleged burglary of the residence of Robert Osborn. (Affidavit, paragraph 42)

4. Fraud, misrepresentation occurring prior to the or at the hearing or misconduct of parties adverse to Respondent's interest in this matter as follows occurring prior to or at the hearing, to-wit:

(a) The Respondent was prevented, by ruling of the hearing officer, in response to an objection from the Disciplinary Commission, from introducing *any* testimony of Paul Banton. The basis of the objection was that Banton had in his possession a transcript of testimony given at the hearing by Richard Dean Smith, a witness for the Commission, which said transcript was prepared by Respondent's attorney from a tape recording made at the hearing with the consent of the Court, and provided Banton by Respondent's attorney specifically for the purpose of pointing out wherein witness Smith had lied.

Respondent points out to the Court that the complaint filed against Respondent specifically named Mr. Banton as being involved in criminal activity together with Respondent and was the only person who could corroborate Respondent's evidence and refute the testimony of Commission witness Smith. It is interesting to note that the Commission did not call Mr. Banton as their witness although it is believed that Respondent will be able to demonstrate why if he is permitted a rehearing in this matter.

No showing was made that Mr. Banton had been exposed to any portion of the proceeding other than a copy of said transcription. Mr. Banton would, had he been permitted to testify, give valuable testimony relevant to refuting other testimony introduced by other Commission witnesses. The deprivation of the benefit of Mr. Banton's testimony denied Respondent

due process of law under both state and federal constitutions.

(b) The Respondent was prevented, by the hearing officer, from introducing the testimony of Phyllis J. Wireman, even though no showing was made that she was exposed to any portion of the proceeding held in this matter except upon the testimony of Laura Shephard, witness called by the Disciplinry Commission and adverse to the Respondent and even though no evidence was introduced to demonstrate that Phyllis J. Wireman may have been exposed to any of the proceeding in this matter other than a portion of Disciplinary Commission's witness Holmes, and even though a denial of the benefit of the testimony of Phyllis J. Wireman denied to Respondent due process of law under both the state and federal constitutions.

(c) After the hearing officer's ruling, Respondent's witness, Phyllis J. Wireman, was prevented from testifying about *any matter which had been discussed at the hearing* even though the Disciplinary Commission had presented its case in chief and even though Laura Shephard, Disciplinary Commission witness, adverse to Respondent, and being the only testimony that Phyllis J. Wireman had listened to any recorded evidence, clearly states that Respondent asked her to listen only to the testimony of Disciplinary Commission's witness Holmes and was for the purpose of pointing out where Holmes had lied and even though Laura Shephard testified to the effect that Holmes had indeed lied.

(d) The hearing officer refused to strike the direct examination of Disciplinary Commission's witness David Banton, even though Respondent was denied the right of cross-examination of such witness and even though said David Banton was named in the complaint against the Respondent as a party to the alleged

misconduct of Respondent. The effect of the hearing officer's ruling shifted the burden of proof and the burden of going forward with the evidence to the Respondent in violation of the rules of evidence and in contravention of the demands of due process under both the state and federal constitutions.

(e) The hearing officer refused to admit the testimony of Respondent's witness Paul Banton and Phyllis J. Wireman even though there was no showing that either witness had discussed testimony they would give with any other witness outside of the Courtroom.

(f) The hearing officer ruled a private hearing as requested by Respondent and as permitted by rule relative to discipline of attorney was tantimount to a separation of witnesses even though it was clearly shown from the evidence that neither the Respondent, his attorney, nor the hearing officer considered the same as a motion for separation of witnesses. It is clear from the records filed herein that the hearing officer permitted the Disciplinary Commission's attorney to interpret for him the meaning of a private hearing, thus abrogating his duties as hearing officer in favor of the Disciplinary Commission and its attorney.

(g) The ruling of the hearing officer Dowling prevented testing of Disciplinary Commission's witness Laura Shephard's testimony by Respondent's witness Phyllis J. Wireman even though the record clearly shows that Laura Shephard testified before the hearing officer's ruling and could not possibly have influenced the testimony of Phyllis J. Wireman.

(h) The ruling of hearing officer Dowling in refusing to receive testimony of Respondent's witness Paul Banton and Phyllis J. Wireman was so broad that it prevented them from testifying as to *any* evidence, either probative or going to credibility of wit-

nesses since it was made after presentation of Disciplinary Commission's case in chief.

(i) The refusal of the hearing officer prevented Respondent from discovering the full extent of immunitive and grants of favorable treatment and promises of favorable treatment of Disciplinary Commission's witness Richard Dean Smith.

(j) Hearing officer denied Respondent the right of cross-examination of Disciplinary Commission's witness Smith.

(k) Hearing officer refused to admit into evidence taped interviews by Disciplinary Commission's witness Smith and investigative officer's working for and on behalf of the Disciplinary Commission.

(l) The record is clear that the hearing officer was more interested and sympathetic toward Disciplinary Commission's witness Smith than in determining truthfulness of allegations against Respondent.

(m) Disciplinary Commission's attorney Hughes and hearing officer Dowling almost daily conferred with each other out of the presence of Respondent and Respondent's attorney, some conferences lasted for several minutes.

(n) The record will show that on several different occasions hearing officer refused to permit examination of witnesses at trial that may lead to evidence to support Respondent's position, even though Respondent was denied effective discovery prior to the hearing.

(o) The hearing officer insisted upon conducting the hearing herein during the same period of time that a grand jury was conducting an investigation on the same allegation contained in the complaint filed against Respondent even though, as the record will show, Respondent requested on at least four different

occasions that the hearing be delayed until after said grand jury inquiry and even though all local news media, as well as other news agencies throughout the state of Indiana, daily, throughout the entire four months involved in the hearing published derogatory, false and misleading statements about Respondent and in general used the fact that Disciplinary proceeding against Respondent as support for a reason for grand jury inquiry and vice versa and even though the conducting of said hearing at said time denied Respondent due process of law both at the hearing held in this matter and in the stated grand jury proceeding.

(p) The hearing officer denied Respondent the right of presenting evidence of a political conspiracy against Respondent, the presentation of which would not only have been a direct attack upon the truthfulness of the allegations contained in the complaint against Respondent, but would further have been a direct attack upon evidence presented by Disciplinary Commission's witnesses and upon the credibility of such witnesses. He permitted such witness called by Respondent to hide behind the Indiana Shield Law as interpreted by Disciplinary Commission's attorney and the attorney for the witness, thus abrogating his duty as hearing officer to make a determination upon presentation of evidence concerning waiver of benefits of Shield law, extent of protection afforded by the Shield law, whether the questions propounded called into effect the Shield law and whether or not the witness had demonstrated the right to invoke the Shield law.

(q) Hearing officer's denial of Respondent's right of presenting evidence of a political conspiracy against Respondent prevented him from proving that the State Police officers who conducted investigations against Respondent on behalf of the Disciplinary Commission were prejudice and biased against Re-

spondent and purposely provided the Disciplinary Commission evidence which they knew to be false and given by Disciplinary witnesses for no other reasons than promise of favorable treatment in exchange for such false testimony.

(r) The hearing officer's denial of Respondent's right of presenting evidence of a political conspiracy against Respondent and from interrogation of news media personnel under oath prevented Respondent from proving pressures brought to bear upon officials of the Disciplinary Commission to file a complaint against Respondent and to properly inquire into the truthfulness of Disciplinary witnesses and truthfulness of evidence proffered by them. An examination of the records and briefs filed in this matter leaves but one conclusion as to the truthfulness of Disciplinary Commission's chief witness Smith, that conclusion is that his testimony was completely untrustworthy and not worthy of being presented in this hearing. The only conclusion that can be drawn from all the evidence, viewed on a whole, is that the Commission was intentionally misled by its investigation officers and news media personnel or it willfully ignored acceptable rules of fair play, honesty and professional responsibility in vouching for and presenting such evidence.

(s) An examination of all records, documents and briefs forming the record in this matter demonstrates that the Disciplinary Commission's attorney intentionally frustrated efforts to determine the truth or falsity of the allegations contained in the complaint against Respondent, but rather can be viewed as intentional efforts to prevent presentation of true facts to the hearing officer.

(t) An examination of records of proceedings reveals that the net result of procedures employed during the entire proceeding amounted to a shifting

of the burden of proof and burden of going forward with the evidence to the Respondent.

(u) An examination of the records of proceedings reveals that the hearing officer and at the instance of the attorney for Disciplinary Commission denied discovery before the hearing and later denied inquiry and search for truth at the hearing.

(v) An examination of the records of proceedings reveals that the hearing officer, at the instance of the attorney for the Disciplinary Commission, denied Respondent the right to inquire in to areas that a witness may have testified to at a grand jury proceeding claiming benefit of secrecy oath, but permitted Disciplinary Commission to inquire freely.

(w) An examination of the records of proceedings reveals that the hearing officer either did not understand the meaning, purpose and limitation of oath administered by a grand jury or that his rulings relative thereto were based upon prejudice toward Respondent or upon favoritism toward Disciplinary Commission.

(x) An examination of the entire proceeding demonstrates that the Disciplinary Commission and its attorney violated that part of Rule 23, Section 1 which reads ". . . and to protect attorneys from unwarranted claims of misconduct".

(y) The hearing officer demonstrated prejudice toward the Respondent when he permitted the taking of certain depositions but refused to require answers from deponants. In addition to frustration of attempts at discovery, there was a considerable waste and loss to Respondent of money, time and energy.

(z) The holding of Discipline hearing at the same time that a grand jury investigation was being conducted was totally unfair to Respondent. A bootstrapping affect occurred. The grand jury would have

looked foolish not to indict if the Supreme Court pursuant to this proceeding later ordered discipline; the hearing officer would have looked foolish had he not made a finding for disbarment after grand jury indictment handed down. The fact that the same people involved, both by way of witnesses and investigation, only added to the unfairness. The self serving interest of the news media taken in conjunction therewith amounted to a total failure of justice. A failure of justice is always worse than any supposed wrong which it may seek to prevent and cannot be allowed to stand.

(aa) An examination of the records in this matter and a review of the Disciplinary Commission's attorney's answer brief leaves one with the impression that he believes himself to have special standing with this high Court, flowing merely from his position as the Disciplinary Commission's attorney. It is apparent that he has either lied in his brief or is so flagrantly careless in its preparation as to appear to completely disregard his responsibility to this Court. Not only does it appear that he deems it unnecessary to argue the case to this Court, an examination of his brief will reveal that few of his arguments are even relevant to the issues raised in Respondent's brief. Most of his authorities are either misinterpreted or are an intentional effort to mislead this high Court. He has failed even to address himself to many of Respondent's arguments, but rather states that ". . . as this Court is aware, the hearing officer in this case was formerly a Judge who is possessed of many years of experience on the trial court bench", thereby implying that the Court should look to hearing officer's findings and recommendations as determinative of the issues involved. Since Mr. Hughes has deemed it wise to call this fact to the Court's attention, it seems equally important that it be pointed out to the Court, and as the Court may be aware,

the hearing officer's reputation as a trial judge among many lawyers is one of incompetence and insufficient understanding of the law. It is believed that the record of the proceeding in this matter will bear out that reputation. Indeed, it may be the very reason for his relying so heavily upon Mr. Hughes' opinion in making his ruling. In any event, through the trial it was apparent to many that the relationship between hearing officer Addison Dowling and Disciplinary Commission's attorney, David Hughes, for whatever reason, is such that they should not participate in the same disciplinary proceeding together.

(bb) An examination of the record of proceedings and briefs filed herein will reveal that the totality of the proceeding are so grossly one-sided toward the Respondent as to render the entire proceeding unfair. It is felt that the sole purpose of the proceeding, from the point of view of all parties except the Respondent, was but to fulfill a formality to comply with the requirement of a hearing, with frustration of Respondent's efforts to exonerate himself.

(cc) An examination of the records of proceedings and briefs filed herein reveals an untold number of times its admission of hearsay testimony and evidence proffered by the Disciplinary Commission. The Commission appears to need to only ask and the same was admitted.

(dd) An examination of the record reveals that rules of evidence were time after time erroneously applied in favor of the Disciplinary Commission and contrary to Respondent's interest.

(ee) An examination of the record reveals that on numerous occasions, Respondent was limited in the scope of direct and cross-examination to his detriment while the Disciplinary Commission was given unreasonable breath of inquiry.

(ff) The relationship created by the Supreme Court establishing the Disciplinary Commission, appointment of its members, establishment of rules of procedure, accepting filing of complaints by said Commission, appointment of hearing officers, and review of the proceedings, seems to create an atmosphere among members of the Commission, its officers and trial attorney, and the hearing officers, that they must be supportive of each other. That the reason for their existence is to punish attorneys and not to determine truth in accordance with principals of fairness and law. Since they, like all of us, are subject to human frailties, it may be understandable, though not to be sanctioned, that Commission members and its officers may be over zealous in their efforts and over estimate their importance in the various systems of human relationships. An examination of the records and proceedings in this case reveals that the hearing officer also identified himself with the same assumptions and aligned himself with the Disciplinary Commission. Whether conscious or unconscious is of importance only in other contexts. What is of importance is that in this matter a manifest injustice occurred. An injustice which not only cannot be sanctioned, but one that cries out for correction.

(gg) An examination of the entire proceeding in this matter will demonstrate that the totality of the proceeding were conducted in such a manner and under such circumstance as to be wholly favorable toward the Disciplinary Commission and contrary to the interest of Respondent, thus denying him both procedural and substantive due process of law. In support of this contention, Respondent incorporates by reference the arguments fostered in his briefs filed with this Trial Court, his arguments fostered in support of other contentions raised by this motion and any and all other records, transcripts and motions forming a part of the records of proceedings, it being

too voluminous to repeat the arguments and set out the proceeding in toto.

(hh) Statement made by the hearing officer to his reporter as set out and supported by affidavit marked "Exhibit B", attached hereto and incorporated herein by reference. (Affidavit, paragraph 16-17)

Respondent contends that such statement by the Trial Court's hearing officer demonstrated prejudice toward Respondent and that the Trial Court's hearing officer had already reached conclusions of law and findings of facts against Respondent. Respondent further offers these arguments in addition to others contained in this motion to help explain errors occurring at said hearing conducted by said hearing officer and his findings, conclusions and recommendation on behalf of the Trial Court.

(ii) Statements made by Disciplinary Commission witness Richard Dean Smith to Mike Sweeney as set out in "Exhibit B" attached hereto and incorporated herein by reference (Affidavit, paragraph 18). Respondent went to great lengths to determine the extent of immunities, favorable treatment and promises of favorable treatment extended witness Smith in exchange for his testimony. An examination of the record will show that the Trial Court's hearing officer largely prevented such inquiry, refusing the discovery prior to the hearing and preventing inquiry at the hearing. Nowhere in the record is there a clear understanding of what those immunities and promises were. Nowhere in the record is there any information such as contained in paragraph 18 of "Exhibit B". It will be readily determinable upon examination of paragraph 18, that the Disciplinary Commission is charged by Smith as being directly involved in promises of favorable treatment and parole for Smith. It is believed that upon hearing that members of the Disciplinary Commission staff and its investiga-

tive personnel will be shown to have conspired by and between themselves, and by and between themselves and Smith, to deprive Respondent of, and to interfere with his civil rights. It is believed that at a fair and impartial hearing, Respondent will be able to demonstrate, not only that Smith's testimony against Respondent is false, but that either certain members of the Commission's staff or of its instigators or both, knew the same to be false.

(jj) Disciplinary Commission witness Smith was promised special treatment and even parole from federal prison in exchange for his testimony at the hearing before the hearing officer in the subject matter as set out in "Exhibit B" attached hereto and incorporated herein by reference Affidavit, paragraph 18). Arguments proffered in favor of (b) above are included herein by reference without repetition.

(kk) Disciplinary Commission officers and/or its investigators promised Commission's witness Smith special treatment and even parole from federal prison in exchange for his testimony at the hearing held before the Trial Court's hearing officer as set out in "Exhibit B" attached hereto and incorporated herein by reference (Affidavit, paragraph 18). Arguments proffered in favor of (b) above are included herein by reference without repetition.

(*ll*) Disciplinary Commission's witness Smith has made many statements to various persons and on several different occasions, attempting to implicate Respondent in illegal activity. An examination of each statement will readily determine that no two are alike. Indeed it is extremely rare when a single fact can be determined to be similar in even any two separate statements. Indeed witness Smith contradicts himself over and over again in the same statement. The sheer number and lengths of statements by Smith prevents their being reproduced in this motion. A

hearing is necessary to point out the vast number of discrepancies.

Mr. Smith's reputation as a liar is well known among police officers and other public officials including the police officers assigned to investigate allegations against Respondent.

Oscar Gates, investigation officer for the Disciplinary Commission admitted to the prosecuting attorney for Tippecanoe County that Smith would make a false statement against anyone and cannot be believed. Yet Smith is vouched for by the same Oscar Gates, investigator for the Disciplinary Commission, and is protected by David Hughes, attorney for Disciplinary Commission at the hearing held in the instant matter before this Trial Court's hearing officer. An examination of the record will demonstrate the extent of Mr. Hughes efforts to prevent Respondent from showing that witness Smith is indeed a liar.

In addition to the testimony given by Smith at the Disciplinary hearing involving Respondent, Smith has made statements referred to in the record, some of which were admitted and some of which were not admitted. He has also made statements at a trial held in May of 1977 and has made statements to Paul Banton in May of 1977. He has made statements as referred to in 3(b) above and has further made statements to federal officials which Respondent has been unable to obtain. Again, upon hearing, Respondent will be able to demonstrate the almost total difference in the account of supposed incidents given by witness Smith. It will be shown that not only in his reputation in the community, that of a liar, but that he is, in fact, a liar.

Respondent was frustrated in his discovery efforts prior to hearing, and was again frustrated at hearing. Under all of the circumstances of this matter, it was

impossible for Respondent to have a fair hearing before an impartial hearing officer. Respondent has since the hearing learned of additional statements made by Disciplinary witness Smith, and upon available information believes them to be further contradictory and knows them to be false. All statements made by Disciplinary Commission's witness Smith are false and made for the purpose of obtaining favorable treatment as promised by prosecuting authorities and police officers, some of whom served as investigative officers for the Disciplinary Commission in this proceeding. (Affidavit, paragraph 18-19)

(mm) Respondent learned in May, 1978 that Disciplinary Commission's witness Gates had conspired with Lafayette Police officer Eberle, Lafayette City Councilman Michael C. Reily and WASK news director Michael Piggott to use perjured testimony against Respondent and in other ways to deprive Respondent of due process of law. (Affidavit, paragraphs 18, 19 & 20)

(nn) Oscar Gates, investigator for Disciplinary Commission was hostile toward Respondent and Respondent's attorney, Robert Mucker, for having made available to George Hanna, Special Prosecutor of Tippecanoe County, Indiana, a statement by Richard Dean Smith, wherein Smith accused Gates of attempting to get Smith to commit perjury, a felony under the laws of Indiana. (Affidavit, paragraphs 18, 19 & 20)

(oo) Oscar Gates conspired with George Hanna, to cause Disciplinary Commission's attorney Hughes to believe Disciplinary Commission's witness Smith's testimony even though both Gates and Hanna knew Smith's testimony as applied to Respondent was false and made for the purpose of promise of immunity and parole. (Respondent incorporates arguments in Affidavit, paragraphs 18, 19 & 20 herein by reference and

further supports his contentions herein stated by paragraph 21 of said Affidavit).

(pp) That information made available to Respondent in May, 1978 proves that Disciplinary Commission's witness Smith and Disciplinary Commission's witness David Banton were lying in their testimony given in this proceeding against Respondent. (Affidavit, paragraphs 18, 19, 20, 21 & 22)

(qq) That Trial Court' hearing officer Addison Dowling and Disciplinary Commission's attorney violated rules of conduct by conferring by and between themselves, outside the presence of Respondent and/or his attorney, regarding the subject matter of this action. (Affidavit, paragraph 23)

(rr) Since the hearing in this matter, Respondent has learned that Laura Shephard and Phyllis J. Wireman, Respondent's then wife were engaged in a homosexual relationship, that Laura Shephard was in love with Respondent's wife and that she resented Respondent for interfering in that relationship. Testimony by Laura Shephard was given as the result of that resentment and because of a confrontation between Laura Shephard and Respondent's then wife and that Laura Shephard swore falsely against Respondent because of said confrontation and fight between she and Phyllis J. Wireman. That Laura Shephard believed she could cause a divorce to occur between Respondent and Phyllis J. Wireman and in the event that occurred, she could again resume her homosexual activities with Phyllis J. Wireman. (Affidavit, paragraph 24)

(ss) That Laura Shephard lied in her testimony given at the herein hearing in several important instances. (Affidavit, paragraph 24)

(tt) That Laura Shephard provided officer Holmes with descriptions of guns and serial numbers and

maybe even photographs before he had seen any guns. That Holmes had her hand written descriptions and serial numbers when he saw guns in petitioner's home. That none of the guns located in Respondent's home. were ever identified as stolen. That Laura Shephard had keys to Respondent's automobile and is believed to have put the hand gun in the trunk thereof. The evidence is uncontested that Respondent did not believe same gun he had in his possession. (Affidavit, paragraph 24)

(uu) That Disciplinary Commission's witness lied when she said guns removed from Respondent's home remained in her automobile trunk. (Affidavit, paragraph 24)

(vv) That Respondent has learned that Disciplinary Commission's witness Laura Shephard lied about lock boxes and contents thereof. (Affidavit, paragraph 25)

(ww) That Trial Court hearing officer submitted his claim in this matter for $5050.00 and that same is unreasonable in view of the proceedings, but does indicate his interest in sitting as hearing officer in this matter. (Affidavit, paragraph 26)

(xx) That Michael Piggott, grieviant in the original petition filed against Respondent advised Respondent that his original petition contained all information contained in the amended petition filed by the Disciplinary Commission, but that they would not permit him to file the same. He further advised that his petition was prepared by his attorney Richard Donahue. Respondent therefore was denied the right to face his accuser and further denied the right to notice and the right to answer the original and amended complaint and further was denied the right to have the original grievance investigated prior to filing of a complaint as required by the rules of procedure in disciplinary proceeding. (Affidavit, paragraph 27)

(yy) Disciplinary Commission's witness Smith received compensation from Tippecanoe County Treasurer for time involved in Disciplinary proceeding. Respondent believes that this was with the full understanding of Disciplinary Commission's officers and/or investigators, and pursuant to an agreement by and between such persons and George Hanna, Special Prosecutor of Tippecanoe County and witness Smith. (Affidavit, paragraph 28)

(zz) Respondent has reason to believe that the failure of Disciplinary Commission's witness David Banton to appear for cross-examination was due to payment to him by George Hanna, Special Prosecutor for Tippecanoe County. Respondent knows that no special efforts have been made to cause his return by said Hanna. Respondent has examined the transcript of David Banton's testimony before a grand jury called by Hanna and from such examination it is apparent that it is almost completely at odds with the testimony given at hearing on this matter by Disciplinary Commission's witness Smith and will be further evidence to completely discredit Smith. It is believed that Disciplinary Commission's attorney, because of his involvement with Oscar Gates, investigator for the Commission and for Hanna and further because of his close association throughout these proceedings with George Hanna knew that the testimony of Banton would contradict that of Smith and that of Disciplinary Commission's witness Laura Shephard. (Affidavit, paragraph 29)

(aa-1) That Respondent has learned that immunities from prosecution were granted to Disciplinary Commission's witness David Banton and Richard Dean Smith by both State and Federal authorities in exchange for testimony against Respondent at both grand jury proceedings and in proceedings in this matter. (Affidavit, paragraph 30)

(aa-2) Respondent has learned that wholesale price of silver dollars in May of 1974 was $2.60-$2.80 each. That he could purchase any quantity he wished at that price directly from C & S Coin Shop in Lafayette, Indiana and did purchase all he wanted at that price. (Affidavit, paragraph 31)

(aa-3) Respondent has learned that Bill Horn carries much hatred for me because of the procedures of Lafayette City Court. (Affidavit, paragraph 32)

(aa-4) Respondent has learned that Bill Horn, Deputy Sheriff sued by Disciplinary Commission's witness David Banton said that if Banton won the law suit Banton would never live to enjoy it. Respondent has learned that because of the great amount of publicity involved, Horn believes Respondent represented Banton in that suit. (Affidavit, paragraph 32)

(aa-5) Respondent has discovered that Disciplinary Commission's witness Larry Mathers had no fear of me as City Judge. That he knew that I would not send him to jail but that he would only have to pay support. He had no objection to Respondent sitting as judge in his matter because he always assumed that Respondent liked him. (Affidavit, paragraph 34)

(aa-6) Respondent has discovered whereabouts of a witness that will prove Disciplinary Commission's witness Smith lied when he said Respondent was at the Frame shop before Court, that Respondent discussed any illegal conduct with Disciplinary Commission's witness Smith or David Banton or with Paul Banton, or that he ever saw Respondent with any type of gun, or purchase any type of gun from anyone, or that Respondent tried to sell Smith an auto or said that Smith owed Respondent $400.00. (Affidavit, paragraph 35)

(aa-7) That the Supreme Court has amended rules of procedure applicable to Disciplinary proceedings and that Respondent should be permitted the benefit of discovery in this matter. Had Respondent been permitted discovery prior to hearing or had not been frustrated in his efforts at discovering the truth at the hearing held before the Trial Court's hearing officer, Respondent would have been able to prove that Disciplinary Commission's witnesses Richard Dean Smith, David Banton, Laura Shephard and Richard Holmes were, in fact, lying. (Affidavit, paragraph 36)

(aa-8) The U. S. Supreme Court has recently cut into the application of Shield Laws and immunity from discovery of information pertinent to the interest of a party in litigation. Respondent urges the Trial Court to apply rationale of the Court's recent rulings in this area to the instant matter. (Affidavit, paragraph 37)

(aa-9) At page 28 of Disciplinary Commission's attorney's brief he makes a statement that all witnesses were admonished not to discuss matters that transpired at the hearing to persons outside the hearing. This statement is untrue and said attorney knew that the same was untrue, but was made by him in the effort to add to the record of the proceedings, matters which were not part of the record. (Affidavit, paragraph 38)

(aa-10) Respondent has discovered a witness who will testify that Disciplinary Commission's witness Richard Dean Smith told him that the reason he failed to appear for trial on a matter pending before Respondent in the Lafayette City Court was because he believed that Respondent did not like him and that if convicted by the jury, the witness would be sure to receive the maximum term of imprisonment and maximum fine. That said witness failed to appear for trial but instead got drunk. That said witness

was arrested on a warrant for failure to appear and that bond was fixed at $5000.00. That said Smith was unable to post bond and remained in jail until the matter was tried to a jury. (Affidavit, paragraph 38)

(aa-11) Respondent has discovered a witness who will testify that Disciplinary Commission's witness Smith once after being acquitted of a criminal charge, made the statement in open court that he was guilty but had beaten the system at its own game and that said Smith often bragged of this account. (Affidavit, paragraph 39)

(aa-12) That testimony of Disciplinary Commission's witness David Banton, given at another hearing denied that I ever talked to Disciplinary Commission's witness Smith about any of his cases pending before Respondent as Judge or that I ever talked to Banton or any other person regarding cases pending before Respondent. That said Banton stated that Respondent was very strict about the procedure and running of his Court. (Affidavit, paragraph 40)

(aa)-13) Special Prosecutor George Hanna has made public statements, the same being carried by local news media, that all interviews with all persons was recorded on tape. The records of grand jury hearings specifically refer to conversations with Disciplinary Commission's witness Richard Dean Smith and David Banton. Respondent has reason to believe that several of the statements are not only contradictory of statements given by said witness at the hearing held herein but that many of said statements will exculpate Respondent of any involvement of illegal conduct. That refusal to permit prehearing discovery and the in-hearing frustration of Respondent's efforts to discover information prevented Respondent from bringing the information contained in said statement before the hearing officer to the great prejudice of Respondent's effort. Respondent further says that

such statements will further show that said Smith was granted immunity far beyond burglaries that he committed but will also show that his immunities extended to all past criminal action on his part, whether, state or federal and whether in Tippecanoe County, Indiana or elsewhere. (Affidavit, paragraph 41)

(aa-14) An examination of the entire proceeding involved and briefs filed in said cause will demonstrate that the net-effect of the procedure employed in conducting said hearing effectively deprived Respondent of his right of procedural and substantive due process of law as guaranteed to him by both State and Federal Constitutions by refusing Respondent rights of confrontation, cross-examination, notice of grievance filed against Respondent as authored by Michael Piggott, right to introduce evidence and to conduct his own defense, his right to have the proceeding conducted by an impartial presiding referee and his right not to have evidence intentionally secreted from him by either Commission's officials or investigating officers, by violation of the right to insist that purgered testimony not be used against him and by permitting secrecy of a grand jury to prevent him to effectively defend himself.

(aa-15) The entire proceedings against Respondent effectively prevents Respondent from obtaining a fair trial and protection of his civil rights because of a failure to permit Respondent to appeal any ruling of the Trial Court to an independent and separate court of appeals.

5. The judgment of the Trial Court is void for the following reasons, to-wit:

(a) Respondent was denied his right to a fair and impartial hearing under the Fifth and Fourteenth Amendments of the United States Constitution by the rulings of the hearing officer concerning:

(1) The admissibility of hearsay testimony proffered by the Disciplinary Commission.

(2) The admissibility of testimony of witnesses who had given previous grand jury testimony on the matter.

(3) The application of rules of evidence.

(4) The scope of cross-examination of witnesses.

(5) Petitioner's motion to strict direct testimony of Disciplinary Commission witness David Banton whom Petitioner had no opportunity to cross-examine.

(6) Restriction of testimony of Petitioner's witness Paul Banton and Phyllis Wireman to matters not previously testified to during the disciplinary proceedings.

(7) Exclusion of any testimony proffered by Petitioner concerning an alleged political conspiracy against Petitioner, including direct examination of reporter who filed initial grievances against him and direct testimony proffered to prove waiver by said reporter of any disclosure immunities under the Indiana Shield Law.

(8) Petitioner's motion to dismiss based on failure of Disciplinary Commission to strictly conform to provisions of the Disciplinary Rules concerning notice, findings of probable cause, and commencement of the hearing.

(9) Denial of effective pre-trial discovery.

(b) Was the Petitioner deprived of his rights of confrontation under the Sixth and Fourteenth Amendment by the rulings of the hearing officer concerning:

(1) His cross-examination of witness on matters relating to their grand jury testimony.

(2) Petitioner's motion to strike direct testimony of Disciplinary Commission witness David Banton who disappeared before completion of his direct testimony.

(3) His examination of reporter who had filed initial grievances against him.

(c) Was Petitioner denied his right under the Sixth and Fourteen Amendment to present favorable witnesses on his own behalf by the hearing offiler's rulings concerning:

(1) Restriction of testimony of Petitioner's witnesses Paul Banton and Phyllis Wireman to matters not previously testified about by other witnesses where witness Paul Banton was Petitioner's only corroborating witness on criminal allegations against him.

(2) Excluding any testimony of Petitioner's witness on alleged political conspiracy against Petitioner.

(3) Excluding any testimony proffered by Petitioner's witness concerning waiver by reporters of any disclosure immunities they may have under the Indiana Shield Law.

(d) Does due process of law under the Fifth and Fourteenth Amendments mandate that the Code of Professional Responsibility, the Code of Judicial Code and any statutory regulations of judicial conduct must be strictly construed.

(e) Does the assumption of Original Jurisdiction by the Supreme Court of Indiana over the alleged criminal conduct of Petitioner violate the United States Constitution in that Petitioner is thereby denied undue process under the Fifth and Fourteenth Amendment of the United States Constitution and equal protection under the law secured by the Fourteenth Amendment of the United States Constitution.

(f) Does the assumption of original jurisdiction by the Supreme Court of Indiana violate the guarantee of a Republican form of government under ARTICLE IV of the United States Constitution?

(g) Does the disbarment of Petitioner deny him due process of law under the Fifth and Fourteenth Amendments in that the record lacks any relevant evidence of crucial elements of charges against him?

6. Respondent's motion should be granted for the following other reasons, to-wit:

(a) The Supreme Court rules relating to discipline of attorneys fails to provide for adequate procedure for review of the Trial Court procedure.

(b) The Supreme Court rules relative to discipline of attorneys violates the dictates of procedural due process of law.

(c) That the entire hearing before the Trial Court's hearing officer in the instant case violated substantive and procedural due process of law.

(d) That the conduct of Disciplinary Commismission's attorney Hughes unduly influenced the testimony of Commission's witness Smith and Shephard.

This motion is based upon the Affidavit filed herein and attached hereto, upon the Memorandum of points and authorities attached hereto, upon the arguments contained herein in support of separate reasons, upon the record and file in this action, briefs and motions filed in this action and upon testimony to be presented before this Court on the hearing of this motion. Respondent prays that his motion for relief from judgment be granted and that the said judgment determined to be void and set aside.

LEWIS T. WIREMAN, Respondent
3908 N. Orchard Court
Lafayette, Indiana 47905
Phone: (317) 423-5595

STATE OF INDIANA
TIPPECANOE COUNTY

Lewis T. Wireman, being first duly sworn on oath deposes and says that the allegations contained in the above and foregoing motion for relief from judgment are true as he verily believes. Dated the 13th day of October, 1978.

LEWIS T. WIREMAN

Subscribed to before me, a Notary Public in and for Tippecanoe County, this 13th day of October, 1978.

FRANCES E. GOOD—Notary Public
A resident of Tippecanoe County, Ind.

My Commission Expires:

November 29, 1979

APPENDIX B(2)

IN THE
SUPREME COURT OF INDIANA

In The Matter Of
LEWIS T. WIREMAN

Cause No. 575 S 122

MOTION FOR RECONSIDERATION OF RULING ON RESPONDENT'S MOTION FOR RELIEF FROM JUDGMENT

Comes now respondent herein and moves the Court to reconsider respondent's motion for relief from judgment heretofore filed herein and to grant respondent a factual hearing on the merits of said motion.

In support hereof respondent respectfully shows the Court:

1. That this honorable court denied respondent's motion for relief from judgment by order entered on August 28, 1979, the same being denied without hearing on the merits of the allegations contained therein.

2. That said motion was denied even though no motion, brief, or affidavit was filed in opposition to respondent's motion by the Supreme Court's Disciplinary Commission or by any other party.

3. That respondent filed with his motion for relief from judgment his affidavit, which affidavit being the only evidence before this Court relative to the issues raised, specifically stating, under oath, among other things, facts sufficient to substantiate the discovery of new evidence which by due diligence could not have been discovered in time to move for a review by the trial court, which evidence was addressed directly to the issues of fraud and misrepresentations occurring prior to and at the hearing, misconduct of parties adverse to respondent's interest in this matter, that respondent was denied procedural and substantial due process of law and that the judgment of the trial court is

void. Respondent incorporates his said affidavit herein by reference.

4. That this honorable court by its order, recognized respondent's motion as a viable vehicle for bringing the matters alleged therein to the attention of the Court. That the propriety of said motion being recognized, it became incumbent upon this honorable Court to grant respondent a hearing upon the merits of his petition.

5. That the denial of a factual hearing upon the merits of respondent's motion is tantamount to a finding that respondent is not entitled to relief from judgment even though he has discovered new evidence of intentional violation of his civil rights, improper conduct on the part of his adversaries, and that a manifest miscarriage of justice occurred.

6. That respondent has sought diligently to bring substantial questions of violations of due process of law before this Court, but that he has been prevented from doing so by the Court's refusal to recognize and pass upon his motion to correct errors heretofore filed and by the Court's refusal to grant him a hearing upon his unopposed motion for relief from judgment. That respondent knows of no other procedure, nor has been able to discover any other procedure for bringing these issues before this Court.

7. That respondent sought to file a grievance against an Indiana Judge alleging substantially similar conduct with which respondent was charged herein. That Honorable Richard M. Gavin, Chief Justice of Indiana, acting as representative of the Indiana Judicial qualification commission advised respondent, in writing, that such conduct as alleged therein was a matter to be raised by the appellate process and not through the grievance process. Respondent does not now take issue with that body's position. Respondent does, however, contend that the same rules of fairness, justice and equity should attach to him as may attach to others.

WHEREFORE, respondent moves this Court for an order setting aside it's denial of respondent's motion for relief from judgment and for an order granting respondent a hearing on the merits of his said motion.

LEWIS T. WIREMAN
1700 Eastway
Lafayette, IN 47905
317-423-5595

CERTIFICATE OF SERVICE

I certify that on the 17th day of September, 1979, service of a true and complete copy of the above and foregoing pleading or paper was made upon Mr. David B. Hughes, 814 I.S.T.A. Building, 150 W. Market Street, Indianapolis, Indiana 46204, by depositing the same in the United States mail in envelopes properly addressed to each of them and with sufficient first class postage affixed.

LEWIS T. WIREMAN, *Pro se*
1700 Eastway
Lafayette, Indiana 47905
Telephone: (317) 423-5595

FILED
MAR 31 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

NO. 79-1205

LEWIS T. WIREMAN,
Petitioner

vs.

INDIANA SUPREME COURT
DISCIPLINARY COMMISSION
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

MEMORANDUM OPPOSING CERTIORARI

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DAVID B. HUGHES

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Attorneys for Respondent,
Indiana Supreme Court
Disciplinary Commission

Central Publishing Company, Inc., 401 N. College Ave., Indianapolis, Ind. 46206

IN THE

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LEWIS T. WIREMAN,
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INDIANA SUPREME COURT
DISCIPLINARY COMMISSION
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

MEMORANDUM OPPOSING CERTIORARI

Respondent, Indiana Supreme Court Disciplinary Commission, by counsel, respectfully submits that the

Petition For Writ Of Certiorari filed herein should be denied.

This matter arises out of the Petitioner's disbarment as an Indiana attorney. *In Re Wireman* (1977), ____ Ind.____, 367 N.E.2d 1368, *cert. denied* 436 U.S. 904. After this Honorable Court denied certiorari, and on or about October 13, 1978, the Petitioner filed with the Supreme Court of Indiana his pleading entitled "Motion For Relief From Judgment". (Petitioner's Brief, Appendix B(1)). The Motion was denied on August 28, 1979. (Petitioner's Brief, Appendix A(1)). Thereafter, on or about September 17, 1979, the Petitioner filed with said Court his "Motion For Reconsideration Of Ruling On Respondent's Motion For Relief From Judgment". (Petitioner's Brief, Appendix B(2)). The Motion for Reconsideration was denied on November 8, 1979. (Petitioner's Brief, Appendix A(2)).

The "Questions Presented" in the instant Petition for Certiorari are whether the Supreme Court of Indiana denied the Petitioner due process of law by (1) failing to conduct a hearing upon his "Motion For Relief From Judgment" and by (2) failing to assure the Petitioner an alternate, disinterested forum to conduct such hearing. (Petitioner's Brief, p. 2). The Petitioner has wholly failed to comply with the requirement of Rule 23(1)(f) of this Court that he show in his statement of the case how the alleged federal questions were timely and properly raised so as to give this court jurisdiction to review the judgments below. Indeed, the Petitioner's Brief and the Appendices thereto show without question that neither question was presented to the Supreme Court of Indiana or otherwise raised in the state court proceedings below.

For the above reasons it is manifest that this Court lacks jurisdiction to review the judgments below and that the

Petition For Writ Of Certiorari should be denied. *Beck v. Washington*, 369 U.S. 541; *Nelson v. County of Los Angeles*, 362 U.S. 1.

Respectfully submitted,

INDIANA SUPREME COURT
DISCIPLINARY COMMISSION

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